

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of McKINLEY BUNCH and U.S. POSTAL SERVICE,
POST OFFICE, Harriman, TN

*Docket No. 00-1313; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a cervical condition caused by his federal employment.

On March 26, 1997 appellant, then a 51-year-old distribution window clerk, filed a notice of occupational disease claiming that he developed herniated cervical disc from lifting 10-to-60 pound bags of mail, approximately 4 to 5 hours a day, 6 days a week. Appellant also submitted a copy of his federal employment application, on which he disclosed that he had undergone surgery for a slipped disc in 1983. By letter dated April 29, 1997, the Office of Workers' Compensation Programs informed appellant that further evidence was necessary to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.

On May 12, 1997 the Office received a diagnostic report dated February 21, 1997, diagnosing appellant with "moderate to marked degenerative disc disease," a copy of a report indicating appellant underwent a cervical discectomy on January 9, 1997, as well as various progress notes. The Board notes that on January 9, 1997 appellant underwent cervical discectomy and fusion at levels C3-4 and in 1983 the cervical discectomy was at levels C5-6 C6-7.

By decision dated June 23, 1997, the Office denied appellant's claim since the evidence of record was insufficient to establish fact of injury.

On October 23, 1998 the Office received a report from Dr. Gary P. Cram dated October 6, 1998, recommending that appellant refrain from lifting objects weighing over 20 pounds. On October 26, 1998 the Office also received an undated statement from Jose Pineda, a former coworker opining that appellant's employment tasks probably caused appellant's medical condition.

By letter dated July 11, 1997, appellant's representative requested an oral hearing, which was held on March 23, 1999. By decision dated May 26, 1999, the hearing representative affirmed the Office's June 23, 1997 decision.

On July 20, 1999 the Office received a report from Dr. John Pace dated July 8, 1997, stating that appellant should not lift objects weighing more than 20 pounds.

By letter dated October 15, 1999, appellant requested reconsideration. In his letter appellant's representative stated that he was submitting an original letter from Dr. Pace, as well as an original handwritten note from appellant. These documents were not found in the record.

By decision dated December 23, 1999, the Office denied appellant's request for modification of the prior decision, stating that the report from Dr. Pace dated July 8, 1997, was insufficient to establish that the diagnosed condition and the need for subsequent surgery was causally related to his federal employment.

The Board finds that appellant has not met his burden of proof in establishing that his cervical condition was caused by his federal employment.

An employee seeking benefits under the Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Vicky L. Hannis*, 48 ECAB 538 (1997).

physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the present case, appellant has submitted medical evidence which provides a diagnosis of his cervical condition. Appellant has also submitted a statement describing his duties as a distribution window clerk which he believes caused his medical condition. However, the medical evidence does not establish a causal relation between the condition and the alleged factors of employment. The only medical evidence of record which approaches the subject of causal relationship is the report from Dr. Pace dated July 8, 1997 and the report from Dr. Cram dated October 6, 1998. In his July 8, 1997 report, Dr. Pace stated: “[Appellant] relates sudden onset of neck pain radiating to his left shoulder approximately in November of [19]96 while lifting bundles of mail, at work. This necessitated [appellant] having an [a]nterior [c]ervical [d]is[c]ectomy in fusion at C3-4 for herniated cervical dis[c] at that level.” He further stated: “It is conceivable that heavy lifting could exacerbate [appellant’s] herniated cervical dis[c] or could have possibly caused his dis[c] herniation.”

Neither the fact that the condition became apparent during a period of employment nor the belief of appellant that the condition was caused or aggravated by employment, is sufficient to establish causal relation.⁶

In his report, Dr. Pace only relates what appellant has told him regarding the onset of neck pain in his left shoulder. He also stated that it was “conceivable” that heavy lifting could have exacerbated appellant’s herniated cervical disc. Dr. Pace’s statement is speculative and does not state with any medical certainty that appellant’s cervical condition was caused by his employment. Dr. Pace offered no medical explanation as to how appellant’s employment duties would have physiologically caused the cervical condition. The Board has held that a medical opinion which is equivocal or speculative is of diminished probative value.⁷

In the report from Dr. Cram dated October 6, 1998, he stated: “[Appellant] relates experiencing sudden onset of neck and left shoulder pain while lifting bundles of mail at work in November of 1996.” Again, Dr. Cram’s statement only relates what appellant has told him as to the cause of his neck and shoulder pain and does not provide a rationalized medical opinion that appellant’s cervical condition was caused by his employment.

Finally, the statement of appellant’s coworker, Ms. Pineda, has no probative medical value. The statement of a lay person is not medical evidence and is not competent on the issue of causal relationship.⁸

⁵ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Ruby I. Fish*, 46 ECAB 276 (1989).

⁷ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁸ *Jesus D. Sanchez*, 41 ECAB 964 (1990).

As appellant has not provided sufficient medical evidence to establish a causal connection between his cervical condition and his employment, he has not met his burden of proof in establishing that he sustained a cervical condition caused by his federal employment.

The decisions of the Office of Workers' Compensation Programs dated December 23 and May 26, 1999 are hereby affirmed.

Dated, Washington, DC
April 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member